

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, JANUARY 5, 2010

7 P.M. COUNCIL MEETING

CALL TO ORDER - Mayor Spitaleri called the meeting to order in the Council Chambers

SALUTE TO THE FLAG – Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember David Whittum
Interim Councilmember Dean Chu
Councilmember Ron Swegles
Councilmember Melinda Hamilton

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Public Safety Don Johnson
Director of Public Works Marvin Rose
Director of Finance Mary Bradley
City Clerk Kathleen Franco Simmons

GENERAL BUSINESS:

1. Approval of Council Meeting Minutes of December 15, 2009

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve the Council Meeting Minutes of December 15, 2009.

VOTE: 7-0

** Approved by Council January 12, 2010*

SPECIAL ORDER OF THE DAY

RESOLUTION Resolution Declaring Canvass of Returns and Results of the General
RTC 10-005 Municipal Election held November 3, 2009

City Clerk Kathleen Franco Simmons provided the staff report.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to adopt the Resolution Declaring Canvass of Returns and Results of the General Municipal Election held November 3, 2009.

VOTE: 7-0

SPECIAL ORDER OF THE DAY – Recognition of Outgoing Councilmember John Howe and remarks

SPECIAL ORDER OF THE DAY – Ceremonial Oath of Office for Council-Elect Anthony (Tony) Spitaleri, Christopher R. Moylan, and James R. Griffith

Former Mayor Pat Castillo administered the Oath of Office to Anthony (Tony) Spitaleri, Sunnyvale City Council, Seat 1.

Santa Clara County Supervisor Liz Kniss administered the Oath of Office to Christopher R. Moylan, Sunnyvale City Council, Seat 2.

Richard Griffith administered the Oath of Office to James R. Griffith, Sunnyvale City Council, Seat 3.

City Clerk Kathleen Franco Simmons presented a Certificate of Election to Councilmembers Spitaleri, Moylan, and Griffith.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember David Whittum
Councilmember Ron Swegles
Interim Councilmember Dean Chu
Councilmember James R. Griffith
Councilmember Melinda Hamilton

PUBLIC ANNOUNCEMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

**2. MOTION Selection of Mayor for 2010 – 2011
RTC 10-002**

City Clerk Kathleen Franco Simmons provided a brief staff report.

Public Hearing opened at 7:43 p.m.

No speakers.

Public Hearing closed at 7:43 p.m.

1st nomination: Councilmember Chu nominated Councilmember Hamilton to serve as Mayor for the two-year term of 2010-2011 and until a successor is selected.

2nd nomination: Councilmember Moylan nominated Councilmember Swegles to serve as Mayor for the two-year term of 2010-2011 and until a successor is selected.

Councilmember Hamilton accepted the nomination and provided a candidate statement.

Councilmember Swegles accepted the nomination and provided a candidate statement.

City Clerk Franco Simmons stated that Council may vote for only one candidate, in the order nominated, and the first candidate to receive four votes is the winner.

VOTE on 1st Nomination: 4 - 0 (Councilmembers Swegles, Councilmember Moylan, and Councilmember Spitaleri abstained)

Councilmember Spitaleri congratulated Mayor Hamilton and invited her to take the Mayor's seat at the dais. Mayor Hamilton took the Mayor's seat and presided over the remainder of the meeting.

**3. MOTION Selection of Vice Mayor for 2010
RTC 10-003**

1st nomination: Councilmember Spitaleri nominated Councilmember Moylan to serve as Vice Mayor for the one-year term of 2010 and until a successor is selected. Councilmember Moylan accepted the nomination.

2nd nomination: Councilmember Whittum nominated Councilmember Griffith to serve as Vice Mayor. Councilmember Griffith respectfully declined.

Lacking any further nominations, Mayor Hamilton declared Councilmember Moylan Vice Mayor.

CONSENT CALENDAR

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve the Consent Calendar.

VOTE: 7-0

1.A. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.B. RTC 10-007 List of Claims and Bills Approved for Payment by the City Manager – List No. 485

Staff Recommendation: Review the attached lists of bills.

Contracts: SunnyvaleWorks!

1.C. RTC 10-009 Authorization to Modify an Existing Contract for the Installation of Curb Ramps 2009 Phase 2 (F0912-61)

Staff Recommendation: It is recommended that Council modify an existing contract with SpenCon Construction, Inc., in substantially the same form as the attached Amendment to General Construction Contract, by increasing the Council-approved amount by \$23,270. This makes the new total not to exceed value of the contract plus contingencies \$288,270.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

RECESS - Council took a recess at this time and reconvened at 8:10 PM with all members present.

PUBLIC COMMENTS

Genavieve Heywood, Pastor of the Congregational Community Church of Sunnyvale, requested Council to do a study and look into their Code of Ethics to determine Council's role in third party disputes. Heywood cited an instance where a Councilmember spoke to the detriment of the Church's potential sale of their preschool.

Tammy Salans submitted a flyer which promotes saving local economies. Salans elaborated the goals of the project and how local spending at independently owned businesses benefits the community more than spending at national chains and online purchases.

Josh Salans spoke regarding the Mary Avenue extension project and the City of Sunnyvale's Environmental Impact Report (EIR) which was the subject of a suit brought against the City by neighboring residents. Salans referenced the Judge's ruling in favor of the residents and against the City of Sunnyvale. Salans spoke regarding the City's appeal and asked how much more money in legal wrangling Sunnyvale would need to spend before it cleans up its development processes.

PUBLIC HEARINGS/GENERAL BUSINESS

**4. MOTION Annual Public Hearing - Potential Council Study Issues and Budget
RTC 10-001 Issues for Calendar Year 2010**

Assistant City Manager Robert Walker provided the staff report.

Councilmember Whittum provided a document proposing three study issues which had previously been dropped and one new study issue. Whittum stated the new study issue he is proposing is regarding "Pay to Play Reform," which is an ordinance providing for recusal of a Councilmember from decisions involving a financial interest of a campaign contributor in excess of a certain amount.

Mayor Hamilton proposed a study issue that all changes to boards and commissions bylaws go through a Council committee. Councilmember Whittum co-sponsored the study issue.

Mayor Hamilton explained that any changes to the boards and commissions policy would go through a Council committee first, before going to the full Council for action.

Vice Mayor Moylan inquired as to why a study issue would be necessary; it's something the Council could take action on.

City Manager Gary Luebbbers stated the purpose of the study issue would be to lay out the pros and cons and give an opportunity to determine which direction to go. If Council wants to do it the other way and make it a Council decision when the opportunity presents itself, that would work as well.

Councilmember Chu proposed a study issue regarding political signs. The study would determine if there are penalties that can be assessed for excessive abuses, such as forgoing fee waivers or future bans at future elections. Councilmember Spitaleri co-sponsored the study issue.

Vice Mayor Moylan confirmed that CDD 09-04 addresses this issue, and Councilmember Chu asked that CDD 09-04 be expanded to include penalties.

Public Hearing opened at 8:25 p.m.

Matt Lucero spoke regarding the study issue on medical marijuana dispensaries, particularly with regard to owning and operating medical marijuana dispensaries in the South Bay. Lucero urged Council to rank the study issue as a high priority.

Max Kaehn spoke in support of public campaign financing, and urged Council to sponsor the study issue and rank it highly.

Sena Havasy spoke in support of considering the public funding of elections.

Mei-Ling Stefan urged high ranking of the study issue regarding enforcement of telecom tower requirements, formerly CDD 44, now the enforcement options part of CDD 09-08. Stefan asked that the study issue be restored to the original to stand on its own, rather than combining it with two other issues in CDD 09-08. Stefan also urged high ranking of DPS 10-01; OCM 10-01 and CDD 09-02.

Alex Havasy encouraged a study of public financing of campaigns.

Norine Krueger encouraged continuing the study of public financing of campaigns.

Tap Merrick encouraged a ceiling on candidate donations. Merrick proposed a study of the establishment of a grade and step payroll system to formalize the City's payroll structure more specifically and tie it more closely to the Federal Government's step and grade system. Merrick added that he supports pension reform and spoke about residential sewer rates based on water consumption. Merrick stated he discourages the establishment of an auto mall on Onizuka.

Jean Lamar spoke in support of public financing of campaigns.

Elaine Manley, President of the League of Women Voters, encouraged continued study of public financing of political campaigns and campaign finance reform.

Craig Dunkerley spoke in support of public financing of campaigns.

Rose-Marie Twu spoke in support of the continued study of campaign finance.

Kevin Jackson, Bicycle and Pedestrian Advisory Commission Chair, spoke on behalf of the commission in support of DPW 10-06 Plan Line Study to Accommodate Bicyclists and Pedestrians; DPW 09-01 School Transportation Demand Management Opportunities; DPW 09-02 Update/Review Corner Vision Triangle Municipal Code Ordinance; DPW 09-04 Impacts of Traffic Calming Devices on Cyclists; DPW 09-03 Suitable Bicycle Schemes for Office, Shopping Centers and Entertainment Venues; and DPW 10-07 Homestead Road Bike Lane Hours of Operation Review.

Stephen Zyskiewiez spoke in support of an ordinance to allow medical marijuana dispensaries.

Bob Obrey, Arts Commission Chair, spoke on behalf of the commission in support of the study issue to explore opportunities to develop a community theater based in downtown Sunnyvale. At their October 21, 2009 meeting, the Arts Commission voted unanimously to recommend this study issue.

Nancy Smith spoke in support of studies of even year elections and campaign finance reform.

Tara Martin-Milius proposed a study issue regarding re-striping and reconfiguration of East Duane Avenue for traffic calming and to add bike lanes.

Dan Hafeman proposed renaming the study issue regarding disposable plastic bags to disposable bags. Hafeman stated there are issues with disposable paper bags as well. Hafeman suggested a charge for disposable bags and spoke in support of the study issue. Hafeman also spoke in support of a sustainability commission reporting to staff.

Patrick Walz spoke in support of review of bike lane hours on Homestead Road. Walz also spoke regarding the number of hours suggested by staff for the Plan Line Study and suggested the study could be split into two phases.

Public Hearing closed at 8:54 p.m.

Vice Mayor Moylan inquired if the traffic calming issue could be requested for evaluation by staff, rather than require a study. Director of Public Works Marvin Rose responded that there is an operational process for traffic calming. Rose added that the issue of lane changes and bicycle lanes is a separate issue and Duane may be on the Pedestrian and Bicycle Opportunities Study.

Councilmember Griffith confirmed with Director of Public Works Rose that the study issue for plastic bags would include all bags.

Following completion of Item 4, Mayor Hamilton read into the record that Consent Calendar Item 1.B. List of Claims and Bills No. 485 was actually List of Claims and Bills No. 484.

5. ORDINANCE NO. 2912-09 Adoption of Ordinance No. 2912-09 Amending Sunnyvale Municipal Code Title 10 (Vehicles and Traffic) and Title 19 (Zoning) to Incorporate the 10,000 Pound Weight Limitation for Parking Purposes in all Applicable Sections

City Attorney David Kahn provided the staff report.

Councilmember Griffith announced he would abstain on this vote as he was not on the Council during the first reading of the ordinance.

Public Hearing opened at 8:57 p.m.

No speakers.

Public Hearing closed at 8:57 p.m.

MOTION: Councilmember Spitaleri moved and Councilmember Chu seconded the motion to approve the second reading of Ordinance No. 2912-09.

City Clerk Kathleen Franco Simmons read the Ordinance title for the record.

VOTE: 5 - 1 (Councilmember Whittum dissented, Councilmember Griffith abstained)

**6. RESOLUTIONS Resolutions to Join CaliforniaFIRST Program to Establish a Property-
RTC 10-006 Assessed Clean Energy Program in Sunnyvale**

Director of Community Development Hanson Hom provided the staff report.

Councilmember Chu confirmed with Director Hom that the public hearing noted in the staff recommendation takes place this evening.

Councilmember Griffith stated that becoming part of the program is only part of the issue; making sure residents know the program exists and encouraging them to take part in it is another part. Director Hom confirmed for Councilmember Griffith that California Communities will take the lead to advertise the loan program on behalf of all the participating communities, and Sunnyvale could assist in publicizing such program through our Housing Grant Programs or other City locally sponsored programs. Councilmember Griffith inquired if there have been any specifics of notification. Director Hom stated that there have not been at this point, but they realize there would be a significant public outreach process for these loans, which is part of what they're trying to assess right now.

Public Hearing opened at 9:03 p.m.

No speakers.

Public Hearing closed at 9:03 p.m.

Councilmember Griffith moved and Councilmember Chu seconded the motion to approve Alternative 1, to hold a public hearing to take public testimony on the CaliforniaFIRST Program and bonds to be issued by California Communities, and Alternative 2, to adopt a resolution making certain findings and authorizing certain matters necessary for the City to participate in the CaliforniaFIRST Program, and a resolution authorizing Sacramento County to apply for a SEP1 grant on behalf of the City.

Councilmember Griffith spoke to the motion, stating that the City is trying to achieve sustainability and one of the problems with regard to resources used in housing is the fact that, in looking forward 50 to 100 years, over 95% of the energy, water or carbon footprint is going to be occupied by existing buildings. He stated the main reason why property owners are unable to do what they need to do, is the prohibitive cost of getting over the first hurdle. Councilmember Griffith stated his biggest concern is whether the City will be able to publicize it well enough to be as successful as we need it to be.

VOTE: 7 - 0

**7. MOTION 2010 City Council Intergovernmental Relations (IGR) Assignments
RTC 10-008 and City Council Subcommittees**

Intergovernmental Officer Yvette Blackford provided the staff report.

Councilmember Griffith stated on page two, under VTA Policy Advisory Committee as worded, suggests Councilmember Whittum expressed interest in the Primary and that he expressed interest in the Alternate appointment. Councilmember Griffith stated there was no discussion of Primary verses Alternate, and that he was also interested in the Primary.

Councilmember Whittum stated he is happy to withdraw his name if Councilmember Griffith is interested in serving on the Policy Advisory Committee.

Public Hearing opened at 9:07 p.m.

No speakers.

Public Hearing closed at 9:07 p.m.

Councilmember Spitaleri volunteered to serve as the Santa Clara County Cities Association, Board of Directors Alternate.

Mayor Hamilton stated the Recycling and Waste Reduction Commission is looking for an appointment from Palo Alto or Sunnyvale as the SMART Station cities; Mountain View is represented elsewhere.

Councilmember Griffith expressed interest in the position. Mayor Hamilton indicated it's appointed by the Santa Clara County Cities Association but she wanted to be sure everyone was aware of the position.

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to appoint Councilmembers to the following vacant positions:

- Grand Boulevard Task Force, Primary – Vice Mayor Moylan; Alternate – Councilmember Griffith
- Santa Clara County Cities Association, Board of Directors, Alternate – Councilmember Spitaleri
- Santa Clara County Housing Bond Advisory Committee, Primary – Mayor Hamilton
- Valley Transportation Authority, Policy Advisory Committee, Primary – Councilmember Griffith; Alternate – Councilmember Whittum

VOTE: 7 - 0

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to ratify intergovernmental Council assignments appointed by outside agencies.

VOTE: 7 - 0

Councilmember Swegles stated he is currently serving on the Advisory Council to the Council on Aging Silicon Valley.

Intergovernmental Relations Officer Blackford confirmed that these appointments are Mayoral appointments and with the changing of the Mayor, the appointments need to be appointed again.

Mayor Hamilton confirmed with Councilmember Swegles that he is currently serving on the Military Affairs Council.

Mayor Hamilton accepted the following appointments:

- Santa Clara County Cities Association (SCCCA) City Selection Committee (Mayor Hamilton)
- Military Affairs Council (Councilmember Swegles)
- Advisory Council to the Council on Aging Silicon Valley (Councilmember Swegles)
- U.S. Conference of Mayors (Mayor Hamilton)

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion that the Council Ad hoc Advisory Committee hibernate until just prior to the next City election and appoint three members of the Council who are not running for election at that time.

VOTE: 7 - 0

MOTION: Councilmember Griffith moved and Councilmember Chu seconded the motion to approve Alternative 1: Appoint Councilmembers to intergovernmental relations assignments as identified in the report and in Attachment A.

VOTE: 7 - 0

Councilmember Spitaleri inquired about the Green Ribbon Task Force and inquired if he can continue serving on the Blue Ribbon Committee on Paramedics Services. Mayor Hamilton confirmed the appointment and inquired if the committee sunsets. Councilmember Spitaleri stated they hope to have a seat at the table to express the needs and concerns of Sunnyvale when the next contract comes up for a longer term.

IGR Officer Blackford stated that per Council Policy 7.3.12, an advisory task force will exist until its work is concluded or terminated by the Mayor, but in all cases it's limited to the term of the appointing Mayor. In this case, both of these task forces were appointed by Mayor Spitaleri, therefore they would need to be reappointed. Mayor Hamilton affirmed the reappointments of Councilmember Spitaleri to the Green Ribbon Task Force and the Blue Ribbon Committee on Paramedics Services.

**8. MOTION 2010-2011 Seating Arrangements for City Council
RTC 10-004**

Councilmember Chu stated there was discussion regarding his seat selection, since he is holding the seat for Otto Lee who is in Iraq. He questioned whether it makes any difference to staff if the Council rearranges seats once Otto returns. City Manager Gary Luebbers reported he has been in contact with Councilmember Lee and determined he would take any seat Interim Councilmember Chu chooses.

By consensus, and in order of seniority, Council determined the seating arrangements for 2010-2011 as follows:

- Vice Mayor Moylan chose to remain in the seat to the right of the Mayor.
- Councilmember Ron Swegles selected Councilmember Hamilton's former seat at the far end to the Mayor's left.
- Councilmember Anthony (Tony) Spitaleri selected the seat directly to the left of the Mayor, currently occupied by Councilmember Chu.
- Councilmember David Whittum selected the seat between Councilmembers Spitaleri and Swegles, formerly occupied by Councilmember Howe.

- Councilmember Dean J. Chu selected the seat at the far end to the Mayor's right, currently occupied by Councilmember Whittum.
- Councilmember James R. Griffith took the remaining seat, formerly occupied by Councilmember Swegles.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Chu reported that last week the Valley Transportation Authority (VTA) received approval from the Federal Transportation Administration to re-enter the New Starts Program for approval of the BART to San Jose project.

NON-AGENDA ITEMS & COMMENTS

Vice Mayor Moylan requested two items be placed on a future agenda; the first is clean-up of the process for the selection of the Mayor. The second request is regarding one of the actions Council took on the Parks of the Future Study authorizing the city manager to sell three properties at Orchards Garden Park. Vice Mayor Moylan requested this matter be brought back for reconsideration. Mayor Hamilton approved placement of the items on the agenda. City Manager Luebbbers confirmed with Vice Mayor Moylan that the items were not time sensitive.

INFORMATION ONLY REPORTS/ITEMS

- Draft 2010 Tentative Council Meeting Agenda Calendar
- Draft 2010 Legislative Advocacy Positions and Priorities
- Study Session Summary of December 8, 2009 – Discussion of Council 2010 Intergovernmental Relations Assignments
- Draft Minutes of Parks and Recreation Commission Meeting of December 9, 2009

ADJOURNMENT

Mayor Hamilton adjourned the meeting at 9:26 p.m.

Kathleen Franco Simmons
City Clerk

Date